

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

DAVID FIGUEROA

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CRIMINAL ACTION

NO. 00-094

Memorandum and Order

YOHN, J.

September , 2000

A jury convicted the defendant of possession of a controlled substance with the intent to distribute and two gun possession charges. Conviction on the drug trafficking charge entailed finding that the defendant knowingly possessed a controlled substance. Conviction on the gun possession charges entailed finding that the he knowingly possessed a firearm. The defendant claims that the evidence presented at trial supports neither finding and moves under Rule 29 for a judgment of acquittal. The evidence established that he was operating the vehicle in which the contraband was found, that he regularly used the vehicle, and that he had substantial control of the vehicle. The evidence was also sufficient for a reasonable jury to find that he knew of the contraband's presence in his vehicle. Based on these facts, the court denies the defendant's motion.

I. Background

At around 11:30 p.m. on October 30, 1999, Officer Ronald Dove heard gunshots and drove in the direction of the noise. Tr. of June 12, 2000 (Doc. No. 41) at 31. He drove by a blue,

2-door Mercury Cougar and later saw the same car make a left turn without signaling. *Id.* at 31, 34. The defendant, David Figueroa, was driving the car. *Id.* at 35-36. Dove signaled for Figueroa to pull-over, and he immediately did. *Id.* at 49. As Dove approached the car, he saw Figueroa bend forward in the driver's seat. *Id.* at 35. Once next to the driver's door, Dove asked Figueroa to step out of the car. As he did, Dove noticed a gun on the floorboard in front of the driver's seat. *Id.* at 36. The gun's butt was in plain view, and the barrel was under the driver's seat. *Id.* Dove handcuffed Figueroa and backup officers moved him to a patrol car. *Id.* at 36. The backup officers also moved Figueroa's girlfriend, Lisa Wilson, from the front passenger-side seat to another patrol car. *Id.* at 61.

Dove recovered the gun and determined that it was a pellet gun. *Id.* at 36. He then searched under the driver's seat, Figueroa's seat. *Id.* He first positioned himself in front of the seat and looked under but then pushed the seat-back forward and approach the area under the seat from behind. *Id.* at 64-65. He testified that he shifted positions because it seemed easier to access the area under the seat from behind. *Id.*; Tr. of June 13, 2000 (Doc. No. 42) at 31. Under the back portion of the front seat, he found a package of heroin and a .22 caliber revolver. Tr. of June 12, 2000 (Doc. No. 41) at 37, 65.

Figueroa's girlfriend was the registered title holder of the car, but Figueroa purchased the car with his own money and had it registered in her name.¹ Tr. of June 13, 2000 (Doc. No. 42) at

¹ Figueroa testified that for \$20 he had a neighborhood mechanic obtained temporary registration plates for the car. Tr. of June 13, 200 (Doc. No. 42) at 154. He could not remember the mechanic's last name, and when confronted with the fact that the registration fee in Pennsylvania is \$36, he claimed that he gave the mechanic \$80. *Id.* at 155. When confronted with the fact registering a car in Pennsylvania costs a total of \$108.50 – \$36 in registration fees, \$50 for a permanent license plate, and \$22.50 in title fees – Figueroa had no further explanation. *Id.* at 156. Figueroa also could not explain why the car was registered to a fictitious Cleveland,

60, 85. Also, on the day of the incident Figueroa had driven the car in the morning, afternoon, and late evening. Figueroa's girlfriend did not state that she had driven the car at all that day. *Id.* at 96. Furthermore, Figueroa lived with his girlfriend, had keys to the car, had unrestricted access to the car, and frequently took the car without notifying her. *Id.* at 59, 60, 109.

Dove testified that based on the appearance of the package, he knew it contained an illicit drug. Tr. of June 12, 2000 (Doc. 41) at 37. The package looked like a small brick and consisted of one piece of newspaper wrapped around six bundles. *Id.* at 36-37. Dove's examination of one of the bundles revealed heroin. *Id.* at 37. Examination of the entire package revealed 78 packets of heroin, 13 in each of the six bundles. *Id.*

Figueroa admitted that the pellet gun was his but claimed that neither the package nor revolver belonged to him, and that prior to the Dove's search, he did not know that either item was in the car. Tr. of June 13, 2000 (Doc. 42) at 119, 122. Figueroa's girlfriend also testified that prior to Dove's search she did not know either item was in the car. *Id.* at 80. Figueroa and his girlfriend also testified that others could have placed the heroin and gun in the car. *Id.* at 63-65, 125. On the day of the incident, Figueroa had a stereo system, which he had purchased, installed in the car and later parked the car in his neighborhood near a corner where he acknowledged drug transactions are routine. *Id.* at 109, 114-15. Figueroa testified that he left the car unlocked and that a number of people gathered around the car to listen to the stereo. *Id.* at 115. Figueroa claimed that he and his girlfriend frequently left their car unlocked in the neighborhood. *Id.* at 110. Both also testified that their neighborhood was a high crime area. *Id.*

Ohio address nor why car the car's insurance information also listed the same fictitious address. *Id.* at 157. Figueroa also admitted that took no steps to remedy the address errors. *Id.* at 158.

at 93, 165.

A jury found Figueroa guilty on the three counts of his indictment: (1) possessing a controlled substance with intent to distribute, 21 U.S.C. § 841(a)(1); (2) carrying a firearm during and in relation to the drug trafficking crime, 18 U.S.C. § 921(c); (3) possessing a firearm after having previously been convicted of a crime punishable by imprisonment for over one year, 18 U.S.C. § 922(g)(1). After the verdict, Figueroa filed this motion for a judgment of acquittal.

2. Scope and Standard of Review

In reviewing Rule 29 motions for acquittal, the district court, after viewing the evidence in the light most favorable to the prosecution, determines whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Iafelice*, 978 F.2d 92, 94 (3d Cir. 1992). Furthermore, “the evidence does not need to be inconsistent with every conclusion save that of guilt if it does establish a case from which the jury can find the defendant guilty beyond a reasonable doubt.” *United States v. Sandini*, 888 F.2d 300, 311 (3d. Cir. 1989).

3. Discussion

Figueroa claims that the evidence presented at trial is insufficient to establish essential elements of his drug trafficking and gun possession charges and moves on this basis for acquittal. Specifically, he argues that the evidence presented at trial was insufficient to support the finding that he knowingly possessed heroin and was insufficient to support the finding that he knowingly possessed a handgun. He admits that he operated the car in which the heroin and revolver were

found, but asserts that this fact alone is legally insufficient to establish that he knowingly possessed either piece of contraband.

A conviction for possession with intent to distribute drugs requires that the defendant knowingly possessed the drugs at issue. *See* 21 U.S.C. § 841(a)(1); *United States v. Iafelice*, 978 F.2d at 95. Similarly, a conviction for possession of a firearm in relation to a drug crime requires that the defendant knowingly possessed the firearm at issue. *See* 21 U.S.C. § 924(c). Finally, a conviction for possession of a firearm after having been convicted of a crime punishable by imprisonment for over one year requires that the defendant knowingly possessed the firearm at issue. *See* 21 U.S.C. § 922(g)(1).

A showing of actual possession or constructive possession suffices to establish knowing possession. “A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it. A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing. . . is then in constructive possession of it.” *United States v. Blackston*, 940 F.2d 877, 883 (3d Cir. 1991) (quoting Black’s Law Dictionary 1047 (5th Ed. 1979); *accord Iafelice*, 978 F.2d at 97;

It is reasonable to believe that one who has substantial control over a vehicle tends to know what objects are in that vehicle and tends to have dominion and control over those objects. *See Iafelice*, 978 F.2d at 97 (3d Cir. 1992) (“Common sense counsels that an owner and operator of a vehicle usually has dominion and control over the objects in his or her vehicle of which he or she is aware, and usually knows what is in that vehicle.”); *United States v. Anchondo-Sandoval*, 910 F.2d 1234, 1236 (5th Cir. 1990) (“In sum, knowing possession can be inferred from the defendant’s control over the vehicle in which the illicit substance is contained if there exists

other circumstantial evidence that is suspicious in nature or demonstrates guilty knowledge.”). Evidence of substantial control over a vehicle does not dispositively establish dominion and control over the objects in the vehicle. Other evidence may undercut the significance of the control over the vehicle, and other evidence may also bolster the significance of the control over the vehicle. *See id.*

Here the evidence demonstrates that Figueroa’s drove the car in which the contraband was discovered and had substantial control over the car. Figueroa bought the car with his own money and had it registered in his girlfriend’s name. Because Figueroa lived with his girlfriend and had his own set of keys to the car, he had easy access to the car. He also had unrestricted access to the car and frequently took the car without informing her. Furthermore, Figueroa had his own stereo installed in the car at his own expense that very day. Based on all of these facts, a jury could reasonably conclude that Figueroa had substantial control over the car. Indeed, the evidence is so strong that a jury could have easily concluded that Figueroa was the de facto owner of the vehicle.²

Furthermore, other evidence demonstrates that Figueroa was aware that the contraband was in his car and was aware of what the contraband was. First, both items were found side-by-side beneath his seat. Second, the configuration of the car tended to isolate the area around

² Under Pennsylvania law, “a state-issued ‘certificate of title is in no way controlling on the question of ownership, and is merely some evidence of it.” *Aetna Cas. & Sur. Co. v. Duncan*, 972 F.2d 523, 526 (3d. Cir. 1992) (citation omitted); *accord Wasilko v. Home Mutual Casualty Co.*, 232 A.2d 60,61 (Pa. Super. Ct. 1967); *Dep’t of Transp. v. Walker*, 136 A.2d 1080, 1082 (Pa. Commw. Ct. 1990). State courts determine vehicle ownership by determining whether a party has the attributes commonly associated with ownership, which include control of, use of, and benefit from the vehicle at issue. *See id.*; *Folmar v. Hartford Accident & Indemnity Co.*, 363 A.2d 1304, 1307 (Pa. Super. Ct. 1976).

Figueroa's seat from the area around the front passenger-side seat. Both front seats were bucket seats and were separated by a console. There is no evidence that anyone was in the back seat. Furthermore, the car has only two doors. Third, immediately before the car was searched, Figueroa was observed leaning forward in his seat. Fourth, the pellet gun which Figueroa admitted was his was found partially concealed below the front of the driver's seat and near the contraband. These facts taken together support the inference that Figueroa knew that the contraband was in his car. Also, the nature of the contraband is clear from its appearance. The revolver is clearly a revolver, and the heroin brick's distinctive appearance indicated that it contained a controlled substance. Hence, a jury could have reasonably concluded that Figueroa knew that the contraband items were in his car and knew that the items were contraband.

Figueroa claimed that he left his car door unlocked when he parked in his neighborhood on the day of the incident. He also claimed that he regularly leaves his car door unlocked when he parks in his neighborhood. But yet he also testified that on the day of the incident he parked his car near a corner where drug transactions are routine and that his neighborhood is a high crime area. A reasonable juror could find Figueroa's claim that he left his car unlocked incredible and could reasonably discount the claim that someone else placed the contraband in Figueroa's car without his knowledge.³ Furthermore, after finding Figueroa's story incredible, a reasonable juror could also infer that Figueroa had something to hide, and this in turn could bolster the inference that Figueroa knew that he had heroin and a revolver under his car seat.

Figueroa argues that the contraband was found beneath the back portion of the driver's

³ Figueroa's tortured, indefinite, and unsupported version of how he went about obtaining title, registration, and insurance for the vehicle would easily be a sufficient basis for a juror to conclude that Figueroa was not worthy of belief.

seat and that Officer Dove could see the contraband from behind the seat but not from in front of the seat. However, the evidence does not support his argument that the packet of heroin and revolver were not visible from the front of the driver's seat. Officer Dove's testimony was that he switched from front to back to ease his search of the rear area, not because the rear area was not visible from the front.

Figueroa, in arguing that the evidence is insufficient to support the inference of knowing possession, specifically directs the court to *United States v. Idowu*, 157 F.3d 265 (3d Cir. 1998), and *United States v. Wexler*, 838 F.2d 88 (3d Cir. 1988). As pointed out by the government, Figueroa's reliance on these cases is misplaced. Both cases addressed whether the government's evidence sufficiently established an element of conspiracy: entering into an agreement with the knowledge of the agreement's specific unlawful purpose. *See Idowu*, 157 F.3d at 268; *Wexler*, 838 F.2d at 91. In both cases, the defendants played lesser roles in drug transactions orchestrated by more culpable co-defendants. *See id.* Although the evidence indicated that these less culpable defendants knew they were involved in illicit transactions, the evidence did not directly establish that either defendant specifically knew that he was involved in the purchase of illicit drugs as opposed to some other contraband. *See id.* The Third Circuit held that knowledge of involvement in an illicit transaction cannot alone support an inference of involvement in the purchase of illicit drugs. *See id.* Either defendant may have thought he was involved in a transaction for stolen property, counterfeiting equipment, or some other illicit item. *See id.* The case at bar involves no conspiracy and there is no evidence that the defendant was kept in the dark about the nature of the offense he was committing. Had the defendant admitted that he knew he was transporting a package, but claimed ignorance of what the package was, *Wexler* and

Idowu may have been relevant. Figueroa, however, claimed that he did not know that the package was there at all.

3. Conclusion

First, the contraband's proximity to Figueroa's position in the driver's seat, Figueroa's bending forward in the driver's seat prior to the search, and the discovery of Figueroa's pellet gun partially concealed beneath the driver's seat all support a reasonable juror's inference that Figueroa knew that the revolver and heroin package were in his car. The heroin packet's distinctive appearance plainly indicates that it contained a controlled substance and the revolver is plainly a revolver. Consequently, it is reasonable for a juror to infer that Figueroa knew that the items under his seat were contraband. Second, the evidence plainly establishes that Figueroa had control over the car in which the contraband was found. Third, a reasonable juror could easily find that Figueroa had dominion and control over the objects he knew were in his car. Therefore, a reasonable jury could have concluded that Figueroa knowingly possessed the heroin package and the revolver. Consequently, this court denies Figueroa's motion for a judgment of acquittal. An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PLAINTIFF,
Plaintiff,

v.

DEFENDANT,
Defendant.

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CIVIL ACTION

NO.

Order

And now, this day of September, 2000, upon consideration of the Defendant's motion for a judgment of acquittal (Doc. Nos. 38) and the government's response (Doc. No. 40) , it is hereby ORDERED that the defendant's motions are DENIED.

It is further ORDERED that the defendant's sentencing hearing is scheduled for September 29, 2000 at 2:00 p.m.

William H. Yohn, Jr., Judge